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Elimination of racism, racial discrimination, xenophobia and related intolerance: comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action

Combating racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of the follow-up to the Durban Declaration and Programme of Action

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report prepared by the Special Rapporteur of the Human Rights Council on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai, pursuant to Assembly resolution 65/240.

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Interim report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Summary

The present report to the General Assembly is submitted pursuant to Assembly resolution 65/240 on global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action.

Following a brief introduction, the Special Rapporteur refers, in section II of the report, to thematic issues of concern as addressed within the framework of his mandate since the submission of his previous report to the General Assembly (A/65/295). These issues include: structural discrimination; incitement to national, racial or religious hatred; extremist political parties, movements and groups, including neo-Nazis and skinhead groups, and similar extremist ideological movements; and victims of racism, racial discrimination, xenophobia and related intolerance, including people of African descent, Roma and the victims of discrimination based on work and descent, including discrimination based on caste and analogous systems of inherited status. The Special Rapporteur also highlights some best practices in the fight against racism, racial discrimination, xenophobia and related intolerance.

In section III, the Special Rapporteur refers to further activities carried out since his previous report to the General Assembly, including country visits, thematic press releases, seminars and consultations.

Finally, in section IV, the Special Rapporteur presents a number of conclusions and recommendations relating to the above-mentioned issues of concern. The Special Rapporteur takes note of the valuable efforts made by States to address the challenges and commends Governments for having developed a number of good practices both at national and regional levels. However, he emphasizes that racism, racial discrimination, xenophobia and related intolerance unfortunately continue to have a negative impact on the full enjoyment of civil, cultural, economic, political and social rights. This is particularly blatant for people of African descent, Roma, members of communities based on caste or analogous systems of inherited status and ethnic minorities in general, including in the areas of education, employment, health, housing, access to citizenship, administration of justice, racial profiling as well as access to political decision-making and judicial systems. In this context, the Special Rapporteur provides several recommendations which could be used by States as tools for further analysis and progress.

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I. Introduction

1. On 25 March 2011, the Human Rights Council adopted resolution 16/33, by which it extended the mandate of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance for a further period of three years, in accordance with the terms of reference contained in Human Rights Council resolution 7/34.

2. The present report is submitted pursuant to General Assembly resolution 65/240 on global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action. The Assembly requested the Special Rapporteur, within his mandate, to continue giving particular attention to the negative impact of racism, racial discrimination, xenophobia and related intolerance on the full enjoyment of civil, cultural, economic, political and social rights.

3. In this report, the Special Rapporteur gives an overview of the issues of concern as addressed within the framework of his mandate since the submission of his previous report to the Assembly (A/65/295). These issues of concern for the mandate are presented in section II and include structural discrimination; incitement to national, racial or religious hatred; extremist political parties, movements and groups, including neo-Nazis and skinhead groups, and similar extremist ideological movements; and victims of racism, racial discrimination, xenophobia and related intolerance, including people of African descent, Roma and the victims of discrimination based on work and descent, including discrimination based on caste and analogous systems of inherited status. The Special Rapporteur also highlights some best practices in the fight against racism, racial discrimination, xenophobia and related intolerance.

4. In section III, the Special Rapporteur refers to further activities carried out since his previous report to the Assembly, including country visits, thematic press releases, seminars and consultations.

5. In section IV, the Special Rapporteur presents a number of conclusions and recommendations relating to the above-mentioned issues of concern.

II. Issues of concern for the mandate

6. In his thematic reports, press releases, contributions to conferences and other meetings, the Special Rapporteur has continued to give particular attention to the negative impact of racism, racial discrimination, xenophobia and related intolerance on the full enjoyment of civil, cultural, economic, political and social rights, pursuant to paragraph 32 of General Assembly resolution 65/240.

7. In the present section, the Special Rapporteur refers to various manifestations and forms of racism, racial discrimination, xenophobia and related intolerance (subsection A); victims of racism, racial discrimination, xenophobia and related intolerance (subsection B); and best practices in the fight against racism, racial discrimination, xenophobia and related intolerance (subsection C).

A. Manifestations and forms of racism, racial discrimination, xenophobia and related intolerance

1. Structural discrimination

8. Since the submission of his last report to the General Assembly, the Special Rapporteur has highlighted the issue of structural discrimination on several occasions, including in a public statement and in his annual report submitted to the Human Rights Council at its seventeenth session (A/HRC/17/40).

9. On 18 October 2010, the Special Rapporteur participated in the thematic discussion on "Structural discrimination: definitions, approaches and trends" held in the framework of the eighth session of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action. In the statement delivered on that occasion, the Special Rapporteur acknowledged that while the pervasive existence and manifestations of structural discrimination had been studied and addressed widely, including by United Nations expert mechanisms, that phenomenon remained a difficult one to define. He provided some elements that might contribute to a better understanding of the different manifestations of structural discrimination and its various causes.

10. The Special Rapporteur took the view that structural discrimination refers to racist, xenophobic or intolerant patterns of behaviour and attitudes within societal structures that target specific individuals or groups of individuals, in relation to their race, colour, descent, or national or ethnic origin. Such "societal" structural discrimination is related, inter alia, to the persistence of deeply rooted racial prejudice and negative stereotypes within the societies.

11. The Special Rapporteur further highlighted that structural discrimination can be the result of past historical injustices perpetrated against specific groups of individuals. Long after that formalized racial discrimination was dismantled, the inequalities that were created continued to have a disadvantage or disproportionate effect on the human rights of individuals of specific ethnic and racial groups. Indigenous peoples, Roma, members of communities based on caste or analogous systems of inherited status, ethnic minorities and people of African descent remain particularly affected by this historical legacy, notably in the areas of health, housing, employment, education, administration of justice as well as political representation and empowerment. Thus structural discrimination is one example of the negative impact of racism, racial discrimination, xenophobia and related intolerance on the full enjoyment of civil, cultural, economic, political and social rights.

12. In the context of structural discrimination, the Special Rapporteur would like to reiterate the importance of addressing any discriminatory effects of those laws, policies and programmes that are prima facie non-discriminatory. Indeed, in some cases while the legislation or the public policies seem to be in conformity with international human rights law, and the aim of Governments is to prohibit racial discrimination, their application may have a discriminatory effect. The Special Rapporteur urges States to review and redesign legislation, policies and programmes that have a disproportionate effect, including the legislation, policies and programmes that may discriminate indirectly against specific groups of individuals. He further recommends that particular attention be paid to the situation of migrants while addressing the question of structural discrimination.

2. Incitement to national, racial or religious hatred

13. Since the submission of his previous report to the General Assembly, the issue of incitement to national, racial or religious hatred has been raised by the Special Rapporteur on several occasions, including in a joint press release and in the joint written submissions presented with the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

14. In the joint press release regarding the situation in Côte d'Ivoire, issued with other United Nations human rights experts on 1 April 2011,[1] the Special Rapporteur called on all parties to refrain from any advocacy of national or racial hatred that might incite to discrimination, hostility or violence. He demanded an end to attacks against foreign nationals and joined his voice to the appeal made by the Committee on the Elimination of Racial Discrimination to promptly investigate and punish those responsible for ethnic violence.

15. The Special Rapporteur also addressed the issue of incitement to national, racial or religious hatred in the joint written submissions presented in Vienna,[2] Nairobi[3] and Bangkok[4] to the series of expert workshops of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the prohibition of incitement to national, racial or religious hatred. The expert workshops touched upon the rights and freedoms enshrined in the following provisions of international human rights instruments: article 18 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights, respectively, on freedom of thought, conscience and religion; article 19 of the Universal Declaration and of the International Covenant on freedom of opinion and expression, respectively; article 20 of the Covenant on the prohibition of any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence; and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination on the eradication of incitement to racial discrimination as well as acts of violence or incitement to such acts.

16. In the joint written submissions, the Special Rapporteur explored some legislative and judicial practices in the workshops' regions (Europe, Africa and Asia-Pacific; the fourth expert workshop on the Americas will be held in October 2011). He also explored policies conducive to effectively prohibiting and preventing advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. In that regard, he referred to some examples and pertinent recommendations from the mandate's country fact-finding visits in the different regions and the communications sent to States to help to review legislative and judicial practices and policies.

17. The Special Rapporteur reiterated that all human rights were universal, indivisible and interdependent and interrelated. He underlined that nowhere was that

[1] The full text of the press release is available from www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10908&LangID=E.

[2] www2.ohchr.org/english/issues/opinion/articles1920_iccpr/docs/CRP3.Joint_SRSubmission_for_Vienna.pdf.

[3] www2.ohchr.org/english/issues/opinion/articles1920_iccpr/docs/JointSRsubmissionforNairobiworkshop.pdf.

[4] www2.ohchr.org/english/issues/opinion/articles1920_iccpr/docs/expert_papers_Bangkok/SRSubmissionBangkokWorkshop.pdf.

interdependence more obvious than in the discussion on freedom of expression and incitement to national, racial or religious hatred. He strongly emphasized that freedom of expression and the demands of a pluralist, tolerant, broad-minded and democratic society needed to be taken into consideration in all cases being examined. Freedom of expression had to be understood in a positive sense as one of the essential foundations of a democratic and pluralistic society. It had to be guaranteed equally for all as a way to combat racism and discrimination. With the exercise of that freedom, an atmosphere of respect and understanding between peoples, cultures and religions had to be generated.

18. The Special Rapporteur further recalled that the OHCHR expert seminar on articles 19 and 20 of the Covenant, held in Geneva in October 2008, identified some objective criteria to prevent arbitrary application of national legal standards pertaining to incitement to racial or religious hatred: the public intent of inciting discrimination, hostility or violence must be present for hate speech to be penalized; any limitations on freedom of expression should be clearly and narrowly defined, provided by law, necessary and proportionate to the objective they propound to achieve, i.e., prohibiting hate speech; limitations should not threaten the exercise of the right itself; the least intrusive means insofar as freedom of expression is concerned should be used to prevent a chilling effect; and the adjudication of such limitations should be made by an independent and impartial judiciary. The Special Rapporteur also referred to the Camden Principles on Freedom of Expression and Equality,[5] which provide useful guidance for the interpretation of international law and standards, inter alia, with regard to incitement to hatred. In that regard, he reiterated Principle 12, which clarifies that "the terms 'hatred' and 'hostility' refer to intense and irrational emotions of opprobrium, enmity and detestation towards the target group", that "the term 'advocacy' is to be understood as requiring an intention to promote hatred publicly towards the target group" and that "the term 'incitement' refers to statements about national, racial or religious groups which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups".

19. In the joint written submissions, the Special Rapporteur also noted the positive development of the adoption, on 24 March 2011, by the Human Rights Council, without a vote, of resolution 16/18, entitled "Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence, and violence against, persons based on religion or belief". He expressed his appreciation that the Human Rights Council had, after years of debate, ultimately found a way to unanimously address those worrying phenomena without referring to concepts or notions that would undermine international human rights law. In that context, the Special Rapporteur emphasized the principle that individuals rather than religions per se were the rights-holders.

3. Extremist political parties, movements and groups, including neo-Nazis and skinhead groups, and similar extremist ideological movements

20. With regard to the issue of extremist political parties, movements and groups, including neo-Nazi and skinhead groups, and similar extremist ideological

[5] http://www.article19.org/data/files/pdfs/standards/the-camden-principles-on-freedom-of-expression-and-equality.pdf.

movements, the Special Rapporteur has submitted a report to the Human Rights Council at its eighteenth session (A/HRC/18/44).

21. The Special Rapporteur identified good practices developed by States and other stakeholders to counter extremist political parties, movements and groups. In that regard, he welcomed the prohibition of racial discrimination in a number of States' constitutions and legislation, and appreciated that racial discrimination and incitement to racial hatred were declared an offence under the criminal law of some countries. He also welcomed the fact that racist or xenophobic motives in some criminal legislation were aggravating factors in relation to some offences. Among other good practices, the Special Rapporteur highlighted the programmes specifically launched by States to combat extremism, including to steer youth away from extremist groups; the establishment of specific units to deal with hate crimes in Public Prosecutor's offices; the collection of data on hate crimes, including racist crimes committed by members of extremist groups; as well as training of law enforcement agents, educational measures and awareness-raising activities to foster tolerance and respect for cultural diversity.

22. While taking note of efforts made by States to counter extremist political parties, movements and groups, the Special Rapporteur underlined that important challenges remained which required more efforts and increased vigilance, including with regard to the protection of vulnerable groups of individuals against racist and xenophobic crimes. The Special Rapporteur emphasized that members of minorities, including Roma, Sinti, migrants, refugees and asylum-seekers, continued to be the main victims of violence and attacks perpetrated or incited by extremist political parties, movements and groups. He highlighted the remaining impunity of the perpetrators of racist crimes and expressed his concern about the underreporting of such crimes by the victims.

23. In this context, the Special Rapporteur also raised the challenges posed by extremist political parties, movements and groups regarding the protection and consolidation of democracy and human rights. He highlighted that extremist political parties, movements and groups had gained influence, including through seats obtained in parliaments at the national and regional levels. Furthermore, some extremist political parties, movements and groups had adopted new strategies to secure a place on the political scene by refraining from openly propagating racist and xenophobic discourse. The Special Rapporteur also highlighted with concern the increased use of the Internet to disseminate racist ideas by individuals and groups of individuals closely linked to extremist movements.

24. In view of upcomi g presidential and legislative elections to be held in some countries, the Special Rapporteur called upon traditional political parties to avoid using electoral contexts to fuel populist ideas and to refrain from seeking coalitions with extremist political parties. He further recalled tha: any measures to counter extremist political parties, movements and groups had to be taken in accordance with international human rights law and in a manner that upheld democratic principles.

B. Victims of racism, racial discrimination, xenophobia and related intolerance

25. The Special Rapporteur has repeatedly emphasized the need to adopt a victim-oriented approach, to ensure that actions undertaken truly respond to the concrete needs of those experiencing racism and discrimination. In line with the Durban documents, the Special Rapporteur has highlighted that all victims should receive the same attention and protection and that it is essential to avoid establishing any hierarchy among the different manifestations of discrimination, even if they may vary in nature and degree depending on the historical, geographical and cultural context. All forms of racism and discrimination should be addressed with the same emphasis and determination.

26. In this context, the Special Rapporteur would like to highlight the negative impact of racism, racial discrimination, xenophobia and related intolerance on the full enjoyment of the civil, cultural, economic, political and social rights of certain groups. Since his previous report to the General Assembly, the Special Rapporteur has discussed the situation of people of African descent (see subsection B.1), Roma (see subsection B.2) and those who face discrimination based on work and descent, including discrimination based on caste and analogous systems of inherited status (see subsection B.3).

1. People of African descent

27. In the context of the celebration of the International Year for People of African Descent, the Special Rapporteur contributed to the thematic discussion on "Racial discrimination against people of African descent", held by the Committee on the Elimination of Racial Discrimination in Geneva on 7 March 2011. In addition, he participated in the thematic discussion on "People of African descent: Overview of the current situation facing people of African descent", held in the framework of the tenth session of the Working Group of Experts on People of African Descent on 29 March. A joint statement on "Recognition, justice and development: a road map to achieve full equality for people of African descent" was also delivered by the Special Rapporteur and other United Nations independent human rights experts on the occasion of the International Day for the Elimination of Racial Discrimination on 21 March.

28. The Special Rapporteur acknowledged that progress and positive changes had been made; however, he emphasized that important challenges still remained. Indeed, despite century-long fights against racism and racial discrimination, people of African descent continued to be discriminated against and marginalized as a result of the historical injustices and grave human rights violations they had suffered from in the past, including slavery and the transatlantic slave trade. That was particularly blatant in the areas of education, employment, health and housing. Inequalities also seeped into the access to political decision-making and judicial systems. In the administration of justice in particular, important challenges remained with regard to racial discrimination against people of African descent and their unequal treatment before the law, especially in the criminal justice system. They often face institutional racism in the area of penal administration. Racial profiling by the police also adversely affects them.

29. Inequalities in all aspects of daily life of people of African descent demand continued urgent attention. Subtle, but ever present, structural discrimination or institutionalized racism is part of their everyday existence. They are regrettably not accepted as part of the culture within public institutions or private enterprises, nor within the wider society. It is crucial to recognize that racism and racial discrimination against people of African descent remain embedded in societies.

30. In that context, the Special Rapporteur also emphasized the situation of women and girls of African descent who often suffer multiple forms of discrimination on the basis of their descent and gender. Women and girls of African descent are regularly more marginalized and discriminated in comparison to men in key areas such as education, public and political life, health, and access to labour markets and they remain particularly vulnerable to exploitation, trafficking, racial abuse and violence.

31. In the Special Rapporteur's view, the participation of people of African descent in political, economic, social and cultural aspects of society, as well as in the advancement and economic development of their countries, is indispensable for an inclusive society. A particular reference was made in that regard by the Special Rapporteur to paragraph 32 of the Durban Declaration,[6] which affirms the importance and necessity of ensuring the full integration of people of African descent into social, economic and political life with a view to facilitating their full participation at all levels in the decision-making process. The invaluable contributions to the economic, social, cultural, civil and political life of society that have been made by people of African descent were also emphasized.

32. Racial discrimination against people of African descent is a major obstacle to achieving development. The Special Rapporteur therefore recalled that meaningful participation and empowerment, equality and non-discrimination were central features of a human rights-based approach to development and that progress in the achievement of the Millennium Development Goals should be encouraged.

2. Roma

33. In his annual report submitted to the Human Rights Council at its seventeenth session, the Special Rapporteur analysed the issue of racism, racial discrimination, xenophobia and related intolerance against Roma. He noted that despite the wide range of measures taken by States at the regional and national levels to eliminate racism and racial discrimination against Roma, more remained to be done in the light of their current situation. Indeed, important challenges remained that revealed grave and deep-rooted problems of racism, racial discrimination, xenophobia and related intolerance against Roma. In that regard, the Special Rapporteur stressed that Roma were particularly exposed to racism, racial discrimination, xenophobia and intolerance when it came to the enjoyment of their rights to education, health, employment and housing. The widespread discrimination they faced fed their marginalization and social exclusion in a vicious manner. The Special Rapporteur noted with concern the segregation of Roma children in schools, the high rate of unemployment of Roma, their forced evictions and growing segregation in the area of housing, and the discriminatory practices they experienced while accessing health care and services.

[6] See A/CONF.189/12 and Corr.1, chap. I.

34. While the socio-economic marginalization and exclusion of Roma was one of the most frequent manifestations of the racism and racial discrimination they faced, Roma were also victims of discrimination in the enjoyment of their civil and political rights. Indeed, in a number of countries, Roma were discriminated against in their access to citizenship, and they were still widely excluded from the public and political life of many countries, where they remained underrepresented or not represented at all in States' public administration and institutions, or in political parties. The Special Rapporteur also noted with concern that Roma were discriminated against in access to justice, including in the criminal justice system, where discriminatory attitudes by prosecutors, excessive delays in dealing with cases brought by Roma and racial profiling by the police were reported.

35. Violence against Roma by private and public actors remains a serious and increasing problem in many countries. In this context, the Special Rapporteur highlighted abuse and violence against Roma by the police, the rise of extremism which increased Roma vulnerability to racist violence, and the persistence of racist and xenophobic discourse against Roma by public officials and politicians, including high-ranking State officials.

36. The situation of Roma migrants who face double discrimination as Roma and non-citizens was also raised with concern by the Special Rapporteur. He noted that the poverty they experienced in their country of origin, as well as racism, racial discrimination and marginalization, often helped to explain their emigration. Furthermore, for several years Roma migrants had frequently been targeted by security policies and discourse that had sometimes resulted in their expulsions. In that regard, the Special Rapporteur expressed his concern about the targeted expulsion of Roma migrants, including to countries where they were likely to face discrimination. He called upon States to respect the rights of Roma migrants as guaranteed by the relevant regional and international human rights instruments.

37. While assessing the reasons for racial discrimination and racism against Roma remained complex, the Special Rapporteur stressed that three main factors, which should not be considered as exhaustive, might explain the persistence of such a situation. They included the lack of participation of Roma in decision-making processes, the lack of implementation of policies and legislation targeting Roma, and the structural dimension of the racism and racial discrimination they faced. In that regard, the Special Rapporteur also underlined that Roma were confronted with institutionalized discrimination reflected both in legislation, policies and administrative measures, and in the discriminatory attitudes of State officials. He emphasized the need for States to ensure that the behaviour of their agents complied with their international human rights obligations.

3. Discrimination based on work and descent, including discrimination based on caste and analogous systems of inherited status

38. The Special Rapporteur has repeatedly raised the negative impact of discrimination based on work and descent on the full enjoyment of civil, cultural, economic, political and social rights. He reaffirms that States have to recognize that discrimination on the ground of descent constitutes a form of racial discrimination prohibited by the International Convention on the Elimination of All Forms of Racial Discrimination. The Special Rapporteur has associated himself with the position taken by the Committee on the Elimination of Racial Discrimination which

in its general recommendation No. 29: Article 1, paragraph 1, of the Convention (Descent) (2002), strongly reaffirmed that "discrimination based on 'descent' includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights".

39. The Special Rapporteur would like to stress that multiple discrimination compounds the severity of the plight of low castes, who sometimes form part of a religious minority. For instance, many Hindu members belonging to "scheduled castes" (Dalits) experience segregation in access to housing, live below the poverty line, earn less than the minimum wage and have no access to education. They suffer from numerous diseases, not least because of lack of access to safe drinking water and sanitation, and sometimes face discrimination in accessing public-health facilities. Pervasive discrimination keeps them poor, uneducated, in terrible living conditions and in menial jobs. Discriminated against in terms of education, children of lower castes are among the most vulnerable, facing recruitment as child labour, soldiers or as sex workers, and rampant torture and corporal punishment. Trafficking and the sale of children, especially young girls, and infanticide of female children are other multiple forms of discrimination. Women and girls face multiple discrimination, including through sexual exploitation, forced prostitution, violence in their family and communities, and from actors in other castes.

40. At the same time, the Special Rapporteur has identified good practices and challenges in the fight against discrimination based on work and descent at the international and national levels. He notes with satisfaction that some Governments have taken initiatives to address the problems facing communities affected by discrimination based on work and descent, and he encourages them to continue their efforts, share best practices and take the lead in regional and international initiatives to eliminate this form of discrimination.

41. However, despite Government efforts to eradicate this type of discrimination through constitutional guarantees, legislation and affirmative action programmes, the Special Rapporteur notes that caste-based discrimination remains deplorably widespread and deeply rooted. He would like to reiterate that, notwithstanding the existence of international legal obligations to protect against discrimination based on work and descent, certain Governments have failed to implement such obligations effectively and have, in some instances, sidestepped the question of caste discrimination by claiming that it does not fall under the scope of the international conventions, such as the International Convention on the Elimination of All Forms of Racial Discrimination, in contrast to the opinion of the Committee on the Elimination of Racial Discrimination. In that regard, he again recommends that the general measures contained in general recommendation No. 29 (2002) of the Committee on the Elimination of Racial Discrimination be implemented.

42. The Special Rapporteur recommends the continued use of the draft principles and guidelines for the elimination of discrimination based on work and descent[7] as a guiding framework for the elaboration of effective measures to be taken by States to fulfil international legal obligations, and invites Governments to consider creating a consultative body of regional human rights institutions to study the issue and raise regional awareness. Furthermore, the Special Rapporteur recommends that measures

[7] www2.ohchr.org/english/bodies/hrcouncil/docs/11session/CRP/A-HRC-11CRP3.pdf.

with regard to the legal framework be taken hand-in-hand with awareness-raising measures.

C. Best practices in the fight against racism, racial discrimination, xenophobia and related intolerance

43. The issue of best practices in the fight against racism, racial discrimination, xenophobia and related intolerance has been addressed on several occasions by the Special Rapporteur, including at the "Panel discussion on best practices in the fight against racism, racial discrimination, xenophobia and related intolerance", held in the framework of the seventeenth session of the Human Rights Council on 15 June 2011. The Panel was organized in the context of the upcoming celebration of the tenth anniversary of the Durban Declaration and Programme of Action.

44. On that occasion, the Special Rapporteur had the opportunity to share his experience on this issue. Good practices highlighted by the Special Rapporteur included legal, policy and institutional measures identified during his country visits and in his reports to the Human Rights Council and the General Assembly. The Special Rapporteur noted, in particular, the development of some national laws against racism and racial discrimination that provided good protection.

45. The outcome document of the Durban Review Conference,[8] in paragraph 28, reaffirmed the call upon States to formulate action plans to prevent, combat and eradicate racism, racial discrimination, xenophobia and related intolerance. In that regard, the Special Rapporteur stressed that some States had developed national action plans against racism that were in line with the provisions of the Durban Declaration and Programme of Action. In some cases, those national action plans and strategies had been elaborated to cover specific groups of individuals, including, for instance, the Roma. The Special Rapporteur also highlighted the specific measures adopted to protect migrant workers, including through the setting up of channels for foreign workers to submit complaints and the establishment of language and financial assistance to file lawsuits in court.

46. The Special Rapporteur also stressed that several countries had already invested in education to foster mutual understanding and respect for cultural diversity, and that some educational policies and programmes had been developed to contribute to the peaceful coexistence of the diverse communities at the national level. Other positive examples identified by the Special Rapporteur included the training of law enforcement agents and awareness-raising measures.

47. In this context, the Special Rapporteur reiterated that creating an institutional framework for the adequate promotion and sharing of best practices in the fight against racism would help States to draw on positive lessons that could be transferred to other contexts. The best practices database of OHCHR, once finalized, will be a key tool in the identification and sharing of good practices. States can also make better use of the universal periodic review process to share good practices.

[8] See A/CONF.211/8, chap. I.

III. Activities of the Special Rapporteur

48. In this section, the Special Rapporteur refers to further activities carried out since the submission of his previous report to the General Assembly, including country visits (subsection A), thematic press releases (subsection B) as well as seminars and consultations (subsection C).

A. Country visits

1. Mission to Hungary

49. The Special Rapporteur visited Hungary from 23 to 27 May 2011. He would like to reiterate his sincere appreciation to the Government of Hungary for its full openness and cooperation throughout the visit. A detailed report containing the observations and conclusions of the Special Rapporteur on the visit will be submitted to the Human Rights Council at its twentieth session, in 2012.

50. At the press conference held in Budapest on 27 May 2011,[9] the Special Rapporteur highlighted the particular context of his visit, which occurred more than 10 years after the first visit to Hungary of a previous Special Rapporteur on racism, and at a time when the Government of Hungary had adopted a new Constitution and was holding the European Union's presidency. He further recalled that the issues raised during his mission had to be understood in the context of the history of Hungary, in particular, the impact of the fall of the Communist regime on disadvantaged groups, especially the Roma minority.

51. The Special Rapporteur commended the Government of Hungary for the significant efforts made to fulfil its international human rights obligations and commitments with respect to the situation of national and ethnic minorities and the fight against racism, racial discrimination, xenophobia and related intolerance. He noted that key legislative, institutional and political measures had been taken. In that regard, he welcomed, among others, key achievements such as Act LXXVII of 1993 on the Rights of National and Ethnic Minorities, and Act No. CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, which both provided a comprehensive and valuable legislative framework on anti-discrimination. The Special Rapporteur also welcomed the unique Hungarian system of minority self-governments, the newly adopted agreement between the Government and Roma leaders, and the European Roma Strategy initiated by the Hungarian presidency of the Council of the European Union.

52. While much had been achieved in the past few years, the Special Rapporteur emphasized that challenges remained, including in relation to the implementation of the measures taken. He stressed that Hungary had to ensure that all those measures led to an effective outcome that would cover the situation of all the individuals who experienced racism and racial discrimination. He identified critical areas which deserved specific attention and determined action. In that regard, he stressed that the situation of refugees, asylum-seekers and migrants was a matter that called for specific attention. The Special Rapporteur also emphasized the importance of ensuring that the constitutional changes would not weaken the legal and institutional

[9] The full text of the press release is available from www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11078&LangID=E.

framework for the protection of minorities' rights. He recommended an effective empowerment of members of minorities.

53. The Special Rapporteur stressed that the situation of Roma individuals, who represented the largest minority group in Hungary, had worsened in the last years, as also recognized by Government officials. They faced racism and racial discrimination, including segregation in the area of education, and were exposed to violence and abuse. Being aware of the historical roots of the current situation of Roma and the difficulties in fixing it, the Special Rapporteur underlined the urgent need for a strong political will to address their situation. There was a great urgency to reinvigorate the education of Roma with all the necessary resources of the Government of Hungary. It was essential that Hungary develop a comprehensive approach for Roma and elaborate a consolidated and coordinating programme of implementation at all levels, starting at the local level. The gap between Hungary's engagement at the international level and the commitment of local governments must be filled in that regard.

54. Finally, the Special Rapporteur underlined that immediate action was required to tackle anti-Semitism. He also called upon the vigilance of the Government vis-à-vis the resurgence of extremist political parties, movements and groups, some of which were alleged to have a racist platform, and he drew the attention of the Government to the recurrence of hate speech.

2. Forthcoming missions

55. The Special Rapporteur would like to thank the Government of Bolivia, which has accepted his request to visit the country. He plans to undertake the mission before the end of 2011. He would like also to thank the Government of South Africa for inviting him to conduct a mission, which he plans to carry out as soon as possible.

56. The Special Rapporteur is very much looking forward to engaging in a constructive dialogue, respectively, with the authorities of the Governments of Bolivia and South Africa on all matters related to his mandate.

B. Thematic press releases

57. On 10 December 2010, in a joint statement delivered by the Coordination Committee of Special Procedures on behalf of mandate holders of the Human Rights Council on the occasion of Human Rights Day,[10] the Special Rapporteur paid tribute to human rights defenders who act against discrimination globally and called for their greater protection. Human rights defenders were the front line of efforts to confront discrimination and all violations of rights — their work was vital, yet they were frequently under threat and must be better protected. On that occasion, the Special Rapporteur also emphasized that human rights defenders had advanced the human rights agenda and brought the principles of the Universal Declaration of Human Rights closer to reality in their societies, promoting equality, the rule of law and justice through their commitment and sacrifices. They had helped to shape the laws and policies that established that no one should be the victim of discrimination. He further underlined that human rights defenders and non-governmental

[10] The full text of the press release is available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10587&LangID=E.

organizations were essential to the functioning of free and fair societies in which anyone, irrespective of his or her ethnicity, religion, gender, politics or sexual identity, had the right to object to inequality or mistreatment and to seek justice and redress.

58. On 17 September 2010, in anticipation of the High-level Plenary Meeting on the Millennium Development Goals, the Special Rapporteur issued a joint press release on the achievement of the Millennium Development Goals,[11] in which he noted that significant progress had been made on the achievement of a number of Millennium Development Goals, but much more needed to be done. A focus on human rights was needed to tackle the structural problems, at both national and international levels, that underpinned and sustained the poverty and underdevelopment whose effects the Millennium Goals tried to alleviate. He emphasized that the Goals were laudable political commitments and had been useful in mobilizing money and energy, but States could achieve those Goals sustainably only if they were guided by human rights obligations that defined which actions should be taken, and by whom. Furthermore, the Special Rapporteur stressed that good governance and the rule of law at national and international levels were critical.

C. Seminars and consultations

59. On 30 November 2010, the Special Rapporteur held an expert consultation in Geneva on the theme "Equality, non-discrimination and diversity: challenge or opportunity for the mass media?". That discussion brought together 12 experts with work experience in mass media organizations with a global outreach, as well as the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on freedom of religion or belief. In terms of their professional backgrounds, the 12 experts included a newspaper editor, television anchor, foreign correspondent, wire reporter, online blogger, head of newsgathering and representatives of an umbrella organization of journalists, an international human rights organization, the United Nations Educational, Scientific and Cultural Organization and the Alliance of Civilizations. As part of the discussion, two specific cases studies were analysed, i.e., the media coverage of recent plans to burn copies of the Koran[12] and the challenges of reporting on post-electoral conflicts in an ethnically divided country.[13] The Special Rapporteur learned more about the decision-making processes within the different mass media organizations and the conditions for making their day-to-day judgement calls, adhering to the key principles of professionalism and independence. The experts highlighted several challenges faced by mass media, for example, the increasingly competitive nature of the industry and the need to provide news around the clock, coupled with a global and evolving media landscape. Drawing on their work, the experts also reflected upon existing initiatives and guidelines used by mass media

[11] The full text of the press release is available from www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10344&LangID=E.

[12] See also the allegation letter of the Special Rapporteurs dated 8 September 2010 (A/HRC/17/40/Add.1, paras. 149-155).

[13] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=2122&LangID=E.

organizations to promote equality, freedom of expression and diversity.[14] They acknowledged that self-regulation for mass media was the best system, albeit imperfect, yet they also emphasized that self-regulation should not lead to detrimental self-censorship or a conspiracy of silence. They also stressed the importance of skills training, including with respect to investigative reporting.

60. On 10 January 2011, the Special Rapporteur contributed to the session on the theme "ECRI [European Commission against Racism and Intolerance] and its international partners: cooperation and synergies", held in the framework of the seminar organized by the Council of Europe on "The fight against discrimination based on racial, ethnic, religious or other bias" in Ankara. While recalling the Durban documents' provisions on the role of regional bodies, the Special Rapporteur underlined the considerable contribution of the European Commission against Racism and Intolerance, the Organization for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights and the European Union Agency for Fundamental Rights in the fight against racism at the European level. In order to strengthen cooperation, the Special Rapporteur emphasized that adopting a comprehensive legal framework addressing all forms of racism and discrimination, as it existed at the United Nations and at European levels, was the correct strategy. In addition, best practices should be shared with other countries and regions on a regular basis, including on complementary measures such as education and awareness-raising initiatives aiming at promoting understanding within society. The Special Rapporteur took the view that a more regular exchange of experiences could certainly provide a framework for the development of useful tools to fight discrimination and racism, making use of the lessons learned. He encouraged further joint action of national, regional and international mechanisms fighting discrimination, and welcomed more interaction with European mechanisms, including with respect to the preparation of country visits in Europe, data, studies, case law, and legal and policy measures. A common approach on some issues would also be worthwhile.

IV. Conclusions and recommendations

61. **The Special Rapporteur takes note of the valuable efforts made by States to address the challenges related to the thematic issues raised in the present report, and commends Governments for having developed a number of good practices both at national and regional levels. However, the Special Rapporteur would like to emphasize that much remains to be done to effectively counter the racism, racial discrimination, xenophobia and related intolerance faced in practice by many women, men and children worldwide.**

62. **Racism, racial discrimination, xenophobia and related intolerance unfortunately continue to have a negative impact on the full enjoyment of civil, cultural, economic, political and social rights. This is particularly blatant for**

[14] See, for example, Al Jazeera's *Code of Ethics* (http://english.aljazeera.net/aboutus/2006/11/2008525185733692771.html); the British Broadcasting Corporation's *Editorial Guidelines* (www.bbc.co.uk/guidelines/editorialguidelines); *Camden Principles on Freedom of Expression and Equality*, prepared by Article 19 (www.article19.org/data/files/medialibrary/1214/Camden-Principles-ENGLISH-web.pdf); and the International Federation of Journalists, *The Ethical Journalism Initiative* (http://ethicaljournalisminitiative.org).

people of African descent, Roma, members of communities based on caste or analogous systems of inherited status and ethnic minorities in general, including in the areas of education, employment, health, housing, access to citizenship, administration of justice, racial profiling as well as access to political decision-making and judicial systems. In addition, women and girls belonging to certain communities remain particularly vulnerable to exploitation, trafficking, racial abuse and violence.

63. Against this background and pursuant to the thematic issues of concern raised in the present report, the Special Rapporteur would like to make the following general recommendations which could be used by States as tools for further analysis and progress.

64. A first step to be taken to address the scourge of racism, racial discrimination, xenophobia and related intolerance is to recognize its existence in our societies as well as in State institutions. While the Special Rapporteur is aware of the difficulty in acknowledging such a reality, he is, however, convinced that recognition is a vital first step towards ending racial discrimination.

65. States are not necessarily aware of the manifestations and the spread of racism and racial discrimination in their societies and how it impacts on the everyday life of the victims, including in terms of marginalization and social exclusion. The absence of appropriate tools to assess the situation, including reliable statistics and data, is among the reasons for such a situation. The Special Rapporteur reiterates that such data and statistics are not only needed to identify the persons and groups affected by racial discrimination, but also to better understand the nature and extent of the inequalities they face, and design targeted policies and measures that will remedy inequalities. He therefore encourages States to collect ethnically disaggregated data and to improve the quality of existing data-collection systems. Such collection must be done in consultation with the concerned groups of individuals and in accordance with international human rights standards. The Special Rapporteur also strongly recommends collecting data on racist and xenophobic crimes perpetrated by individuals closely linked to extremist political parties, movements and groups, including neo-Nazis and skinhead groups. Ethnically disaggregated data may also be an important tool to have a comprehensive picture of the structural dimension of racism and racial discrimination in countries.

66. In addition, the Special Rapporteur strongly calls upon all States Members to demonstrate further political will to prevent and combat racism and racial discrimination, and to promote further effective action to eliminate instances of racism, racial discrimination, xenophobia and related intolerance around the world. Indeed, the elimination of racism and racial discrimination is not always seen as a priority. In this regard, the Special Rapporteur reaffirms that the Durban Declaration and Programme of Action and the outcome document of the Durban Review Conference form the most comprehensive international framework in the fight against racism, racial discrimination, xenophobia and related intolerance. He calls upon all States to bring their support to the Durban process and to effectively implement the commitments contained in those documents. He also urges the concerned States to ratify the

International Convention on the Elimination of All Forms of Racial Discrimination.

67. Recognition and strong political will may lead to results if they are also coupled with an increased vigilance, especially with regard to the rise of certain manifestations and forms of racism and racial discrimination, including the phenomenon of extremist political parties, movements and groups, including neo-Nazis and skinhead groups, as well as similar ideological extremist movements. The Special Rapporteur recalls that no State is immune from such phenomena. In this regard he reiterates that political leaders and political parties must strongly condemn all political messages that disseminate ideas based on racial superiority or hatred, incitement to racial discrimination or xenophobia. Respect for human rights and freedoms, democracy and the rule of law must always be the cornerstone of any programme or activity developed by political parties, while they bear in mind the need to ensure that the political and legal systems reflect the multicultural character of their societies at all levels.

68. The Special Rapporteur encourages States to develop a comprehensive approach when designing measures to address the negative impact of racism, racial discrimination, xenophobia and related intolerance on the full enjoyment of civil, cultural, economic, political and social rights.

69. Furthermore, while developing such a comprehensive approach, States should take into account the structural dimension of racism, racial discrimination, xenophobia and related intolerance, including as experienced by some groups of individuals such as people of African descent, Roma and the victims of discrimination based on work and descent. Indeed, the root causes of structural discrimination need to be addressed through a comprehensive approach that will make it possible to address this phenomenon in all its dimensions. In this regard, the Special Rapporteur urges States to review and redesign legislation, policies and programmes that have a disproportionate effect, including the legislation, policies and programmes that discriminate indirectly against some specific groups of individuals. He further recommends the adoption of national strategies and plans of action against racism, focusing on structural discrimination and the interrelation between racism and the socio-economic or political exclusion of certain parts of their population.

70. An appropriate legal response is a fundamental pillar of the approach recommended by the Special Rapporteur in the present report. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence should be prohibited by law, as should the dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination as well as all acts of violence or incitement to such acts. In this regard, the Special Rapporteur recommends the enactment of legislation consistent with international human rights standards, including article 20, paragraph 2, of the International Covenant on Civil and Political Rights and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. States are also urged to introduce into their domestic criminal law a provision according to which committing an offence with racist or xenophobic motivation or aim constitutes an aggravating circumstance allowing for heavier sanctions. The Special Rapporteur also calls upon States to fully

implement articles 19 to 22 of the International Covenant on Civil and Political Rights, which guarantee the rights to freedom of expression, assembly and association and determine the limitations thereto. In this regard, he emphasizes that States should never lose sight of the fact that the ultimate goal, while addressing the issue of incitement to national, racial or religious hatred, is to find the most effective ways through which individuals can be protected from advocacy of hatred and violence by others.

71. Legal responses are far from being sufficient to bring about real changes. Indeed, legislative measures should be complemented by a much broader set of policy measures, such as affirmative action; the collection of ethnically disaggregated data and statistics; human rights training of State agents; and educational and awareness-raising measures to foster mutual understanding, respect and tolerance.

72. The design and implementation of affirmative action measures or programmes are recommended, including to redress the historical inequalities experienced by certain groups of individuals such as people of African descent, Roma and the victims of discrimination based on work and descent. In this regard, the Special Rapporteur urges States to develop and implement special measures in line with general recommendation No. 32 of the Committee on the Elimination of Racial Discrimination, and the Durban provisions.

73. Racism and racial discrimination within State institutions is a reality that States should not deny. In this regard, the Special Rapporteur recommends that States strengthen the capacity of law enforcement agents and members of the judiciary through regular, adequate and mandatory human rights training activities focusing on racism, racial discrimination, xenophobia and related intolerance, that will also cover racist and xenophobic crimes perpetrated by individuals closely linked to extremist political parties, movements and groups, including neo-Nazis and skinhead groups.

74. To address the root causes of racism and racial discrimination within society and build a society based on tolerance, respect for cultural diversity and non-discrimination, the Special Rapporteur strongly recommends that States invest in education. In this regard, the Special Rapporteur would like to emphasize in particular the importance of history classes in teaching the history of people of African descent, Roma and other communities, their culture and positive contributions, as well as the grave human rights violations they have suffered in the past. He further recalls that human rights education is a major tool in countering the rise of extremist political parties, movements and groups.

75. States should also raise awareness and challenge long-entrenched perceptions to help to shape public opinion towards fairer and more equitable societies. Awareness-raising measures to inform and sensitize populations should therefore complement education efforts. In this regard, the Special Rapporteur calls upon national human rights institutions to develop appropriate programmes to promote tolerance of, and respect for, all persons and all human rights, and to combat extremism.

76. Furthermore, particular attention should be paid to the victims. In this respect, the Special Rapporteur urges States to guarantee to victims of racism

and racial discrimination full access to effective legal remedies, including the right to seek just and adequate reparation. Prompt, thorough and impartial investigation of racist and xenophobic attitudes and crimes should be undertaken, the victims should be made aware of their rights, and those responsible adequately sanctioned. The empowerment of the victims of racism and racial discrimination through further measures to ensure their access to quality and higher education is also a major step to be taken by States. Furthermore, the Special Rapporteur urges States to ensure that victims of racism and racial discrimination be involved in the design, decision-making, implementation and evaluation processes of the national policies, especially those affecting them.

77. **The Special Rapporteur reiterates that all the measures taken to prevent and eliminate racism and racial discrimination should be designed and implemented in conformity with international human rights standards. Moreover, it is crucial that the comprehensive approach, based on a solid legal framework, and key complementary measures are implemented in an effective, inclusive and cooperative manner with the involvement of relevant stakeholders. In this regard, the Special Rapporteur recommends strengthening and better coordinating implementation efforts at the national and local levels, and he encourages States to duly cooperate with civil society organizations, the United Nations and regional human rights mechanisms. He also recommends that further efforts be made by States to share good practices that have been developed at the local, national and regional levels to prevent and eliminate racism, racial discrimination, xenophobia and related intolerance.**